

Tennessee Ethics Commission
October 28, 2008
Minutes

The Tennessee Ethics Commission met on Tuesday October 28, 2008, at 8:30 a.m. in Room 29 of the Legislative Plaza. Chairman Brown and Commissioners Hall, Garland, Knight, Neal and Purser were present. Chairman Brown called the meeting to order at 8:34.

Minutes

After discussion, Commissioner Hall moved to approve the September 23, 2008 meeting minutes as amended during the discussion. Commissioner Purser seconded. The motion passed unanimously.

Commission Financial Report

Commissioners and Executive Director Bruce Androphy discussed the Commission's lobbyist surplus, formatting of the Financial Report, salaries, employee benefits, and allocation of staff time. Commissioner Purser moved to approve the financial report. Commissioner Hall seconded. Commissioner Neal offered an amendment which was not included. The motion passed 4-2, with Commissioners Neal and Knight voting no.

Adoption of Proposed Agenda

Chairman Brown asked if there was objection to the agenda as proposed. Commissioner Neal motioned that the Executive Director's Report and General Counsel's Report be moved to the very end of the agenda. Commissioner Knight seconded. The motion failed 2-4, with Chairman Brown and Commissioners Hall, Garland, and Purser voting no.

Chairman Brown moved to take agenda items out of order to accommodate persons in the audience who had matters before the Commission. Commissioner Hall seconded. Commissioner Brown clarified the motion was to take up the individuals' matters, and not the entire agenda items associated with those matters. The motion passed 6-0.

Matters of Audience Members

Tyco Electronics

Tyco Electronics was issued an employer show cause notice for failure to timely register as an employer of several lobbyists. Mr. Ken Duncan addressed the Commission on behalf of Tyco Electronics. The staff explained that the failure to register constitutes a separate violation for each lobbyist not registered. The staff recommended a fine for each separate late registration resulting in a two thousand, eight hundred dollar (\$2,800.00) fine. Commissioner Purser moved to adopt the staff recommendation. Commissioner Hall seconded. Commissioner Knight asked whether the statute called for multiple penalties for an employer based on each registration not completed, or whether the statute required only one penalty, despite the number of lobbyists who had failed to register. Commissioner Brown clarified that a finding of no good cause was implicit in the motion. Commissioner Knight suggested an amendment reducing the penalty as one employer mistake resulted in several failures to timely register. Commissioner Purser indicated he would allow the amendment. Commissioner Brown asked for a vote on the original motion. The motion passed 4-2, with Commissioners Neal and Knight voting no. Chairman Brown and Commissioner Neal asked that General Counsel research the issue raised by Commissioner Knight and, if the issue is unclear, advise the Commission of General Counsel's findings.

Chuck Laine

Mr. Chuck Laine had been issued a show cause for making a prohibited campaign contribution. Tom Lee addressed the Commission on behalf of Mr. Laine and explained that Mr. Laine did not knowingly violate the Tennessee Ethics Reform Act of 2006. The Commission discussed the legal term “knowing,” the timing of Mr. Laine’s registration, the timing of Mr. Laine’s campaign contribution, the timing of the Commission’s issuance of Advisory Opinion 06-01, and Representative Hackworth’s treatment of the contribution. Commissioner Knight moved to assess no penalty against Mr. Laine on the basis that there was not a knowing violation. Commissioner Hall seconded. The Commission discussed that T.C.A. § 3-6-306(a)(3)(A) stated that the Commission “may” assess a penalty upon finding a violation. Chairman Brown moved to amend to find a technical violation, but assess no penalty. Commissioner Knight did not approve the amendment. The original motion passed 5-1, with Commissioner Purser voting no, and Commissioner Brown clarifying he believed there was a violation but agreed with the result.

DAD of Tennessee, Inc.

DAD of Tennessee was issued a show cause for failure to timely register, and Mr. Tony Gottlieb of DAD of Tennessee had been issued a show cause for making two (2) prohibited campaign contributions. Mr. Gottlieb addressed the Commission on behalf of DAD of Tennessee and asked to move all his matters to the November meeting. Commissioner Hall motioned to move all Mr. Gottlieb’s matters to the November meeting. Commissioner Purser seconded the motion. The motion passed 6-0.

Tim Barnes

Mr. Tim Barnes was issued a show cause notice for failure to timely file a Conflict of Interest Disclosure Statement and addressed the Commission on his own behalf. Executive Director Androphy explained the staff recommendation of a four hundred dollar (\$400.00) penalty. The Commission discussed which on-line filers received confirmations and whether the on-line filing instructions were clear. Chairman Brown moved to find a violation and assess the recommended penalty. Commissioner Hall seconded. The motion passed 5-1, with Commissioner Neal voting no as she believed the Commission’s instructions were unclear.

Fred Robinson

Mr. Fred Robinson was issued a show cause for making a prohibited campaign contribution. Assistant Counsel Willow Fort explained that the contribution was made by a different Mr. Fred Robinson, who was not a lobbyist. Commissioner Hall moved to dismiss proceedings against Mr. Robinson. Commissioner Knight asked that the dismissal letter include a letter of apology, to which Commissioner Hall agreed. Commissioner Neal seconded. The motion passed 6-0.

Tennessee Association of Air Carrier Airports

The Tennessee Air Carrier Association was issued a show cause for failing to timely register. Ms. Megan Frasier and Mr. Robert Watson appeared on behalf of the Tennessee Air Carrier Association. Commissioners Purser and Hall abstained from discussion due to friendships with Mr. Watson. Chairman Brown moved to assess two (2) violations. Commissioner Knight believed the Commission had addressed a situation in which an employer relied upon its lobbyist previously and had found good cause. Commissioner Knight motioned to find good cause. Commissioner Neal seconded. The Commission discussed whether they had discussed a similar situation previously. Commissioner Knight’s motion failed 3-1, with Commissioner Garland voting no.

David Fowler

Mr. David Fowler was issued a show cause for making a prohibited campaign contribution. Mr. Fowler addressed the Commission and explained his reliance on Advisory Opinion 07-03. General Counsel Himmelreich addressed the Commission regarding Mr. Fowler's explanation, the Tennessee Ethics Reform Act of 2006, and Advisory Opinion 07-03. The Commission discussed the frequency of checks written from the account, the frequency of contributions to the account, and whether the Commission had jurisdiction over campaign committees who make contributions. General Counsel Himmelreich asked Mr. Fowler for clarification of his position. Commissioner Hall moved to dismiss the action against Mr. Fowler on the basis that the violation was not knowing. Commissioner Neal seconded. Commissioner Knight agreed with the dismissal, but on the basis that there was no violation. The motion passed 6-0.

Filling the Ethics Compliance Officer Position

Ms. Swigah Mwakipake was in attendance and Executive Director Androphy recommended the Commission consider hiring her to replace Ms. Linda Creasman, who had recently resigned. The Commission discussed the job title, salary, and the duties which would be expected of Ms. Mwakipake. Commissioner Garland moved to hire Ms. Mwakipake. Commissioner Hall seconded. The motion passed 6-0.

Executive Director's Report

Executive Director Androphy summarized his report. Commissioner Knight discussed the Attorney General's offer to transfer a position to the Commission. Commissioner Knight inquired how many positions had been authorized for the Commission at the Attorney General's Office and how many had been filled. The Commission discussed what duties would be expected of the transferred position. Commissioner Purser moved to accept the transfer of a position from the Attorney General's Office to the Commission. Commissioner Hall seconded. The motion passed 4-2, with Commissioners Knight and Neal voting no. Commissioner Knight asked to see Executive Director Androphy's submission to the Sunset Review Committee.

Novo Nordisk

Novo Nordisk was issued a show cause for failure to timely register. Mr. Thad Huguley addressed the Commission on behalf of Novo Nordisk. Commissioner Knight moved to assess a four hundred dollar (\$400.00) penalty. Commissioner Hall seconded. Chairman Brown stated a finding of no good cause was implicit in the motion. The motion passed 6-0.

General Counsel's Report

General Counsel Himmelreich summarized his report. The Commission discussed the draft operating procedures. Chairman Brown asked whether Commissioners wished to take the operating procedures up as one (1) item at the present meeting, or defer the consideration of operating procedures until the November meeting, when they could be considered in detail. After discussion, Chairman Brown stated the operating procedures would be deferred until the November meeting.

Discussion of What Remaining Items Should be Considered at the Present Meeting

Chairman Brown asked what items should be taken up at the present meeting, and which should be deferred until the November meeting. Commissioner Neal asked to review the management risk assessment and attachments. Executive Director Androphy asked to take up pending regulations. Chairman Brown stated the order of the agenda for the day.

Item 1: Disclosure Statement Rules 0580-01-06.

Assistant Counsel Fort summarized legal staff's memorandum. Commissioner Knight addressed staff's

recommendations, stated her desire to have a definition of “commission staff” in these rules, and expressed concern that the rules made it difficult for filers to request waiver of the electronic filing requirement. Commissioner Neal discussed that conferred authority might be delegated. Commissioner Garland moved to adopt staff’s proposed rules. Commissioner Purser seconded. Knight moved to change the wording of the rule in several places and correct grammatical errors. Commissioners Garland and Purser accepted the amendments. Motion passed 6-0.

Item 2: Late Filing Penalty Rules 0580-01-04.

Commissioner Neal moved to adopt staff’s proposed rules. Commissioner Purser seconded. After discussion, Commissioner Knight moved to amend the motion to include specific reference to T.C.A. § 3-6-306 and T.C.A. § 3-6-308. After further discussion, Commissioner Neal moved to enumerate the specific code sections and delete the last sentence of the rule’s statement of purpose and scope. Commissioner Purser accepted Commissioner Neal’s amendment. Commissioner Knight moved to amend the motion so that Rule 0580-01-04-.07 paragraphs (2) and (7) would be as stated in her draft. Commissioners Neal and Purser accepted the amendment. The motion passed 6-0.

Item 3: Local Official Show Cause Orders

Dean Lay

Executive Director Androphy summarized the show cause order. Commissioner Purser moved to adopt the staff recommendation of a one hundred dollar (\$100.00) penalty. Commissioner Hall seconded. The motion passed 6-0.

Brian Yarber

Executive Director Androphy summarized the show cause order. Commissioner Purser moved to adopt the staff recommendation of a seven hundred fifty dollar (\$750.00) penalty. Commissioner Hall seconded. The motion passed 6-0.

Item 5: Requests for Reconsideration

Tennessee Counseling Association

Executive Director Androphy summarized the reconsideration request. Commissioner Hall moved to reaffirm the conditional assessment of three hundred fifty dollars (\$350.00) and deny reconsideration. Commissioner Purser seconded. The motion passed 6-0.

Tennessee Mental Health Consumer’s Association

Executive Director Androphy summarized the reconsideration request. Commissioner Hall moved to reaffirm the conditional assessment of four hundred fifty dollars (\$450.00) and deny reconsideration. Commissioner Purser seconded. The motion passed 6-0.

Albert Keller

Executive Director Androphy summarized the reconsideration request. Commissioner Purser moved to reaffirm the conditional assessment of four hundred fifty dollars (\$450.00) and deny reconsideration. Commissioner Hall seconded. The motion passed 6-0.

Robert Richardson

Executive Director Androphy summarized the reconsideration request. Commissioner Purser moved to reaffirm the conditional assessment of seven hundred fifty dollars (\$750.00) and deny reconsideration. Commissioner Hall seconded. The motion passed 6-0.

Derick Hundley

Executive Director Androphy summarized the reconsideration request. Commissioner Hall moved to reaffirm the conditional assessment of seven hundred fifty dollars (\$750.00) and deny reconsideration. Commissioner Purser seconded. The motion passed 6-0.

Chairman Brown stated that any remaining items would be deferred until the November meeting and adjourned the meeting at 3:01 p.m.